

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

IN RE: ETHICON, INC.,
PELVIC REPAIR SYSTEM
PRODUCTS LIABILITY LITIGATION

MDL No. 2327

THIS DOCUMENT RELATES TO:

Funderburke v. Ethicon, Inc., et al.

Civil Action No. 2:12-cv-00957

ORDER
(Order re: Motion *In Limine* to Exclude Evidence of Spoliation)

Pending before the court is Defendants' Motion *In Limine* to Exclude Evidence of Plaintiff's Allegations of Spoliation [ECF No. 137].

The plaintiffs in this multidistrict litigation have repeatedly alleged that Ethicon lost or destroyed documents relevant to their cases. On February 4, 2014, Magistrate Judge Eifert held that Ethicon's actions were negligent, not willful or deliberate, and denied the plaintiffs' motions for severe sanctions, such as default judgment, striking of defenses, or offering an adverse instruction in every case. *See* Pretrial Order No. 100, *In re Ethicon, Inc., Pelvic Repair Sys. Prods. Liab. Litig.*, MDL No. 2327 [ECF No. 1069] ("PTO No. 100"). However, Judge Eifert recommended that I allow the plaintiffs "the opportunity to introduce evidence regarding Ethicon's loss of relevant documents on a case-by-case basis, and, when appropriate, to tender an adverse inference instruction." *Id.* at 42–43. The plaintiffs have since asked Judge Eifert to reconsider PTO No. 100, claiming that they have discovered new evidence

that establishes that Ethicon's duty to preserve evidence began earlier than previously thought. *See* Pls.' Request for Clarification and Reconsideration, *In re Ethicon, Inc., Pelvic Repair Sys. Prods. Liab. Litig.*, MDL No. 2327 [ECF No. 1099].

While the motion for reconsideration is pending before Judge Eifert, the parties have indicated that they do not desire a ruling on the motion at this time. Until Judge Eifert rules on the motion to reconsider, her original ruling remains in force and effect. Moreover, the plaintiff has offered no evidence or argument that forms a factual basis that warrants an adverse jury instruction *in this case*. Therefore, Ethicon's Motion *In Limine* to Exclude Evidence of Plaintiff's Allegations of Spoliation [ECF No. 137] is **GRANTED**.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: November 22, 2016



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE